

CHAD A. READLER
Acting Assistant Attorney General
BRIAN STRETCH
United States Attorney
ERIC R. WOMACK
Assistant Branch Director
MICHELLE R. BENNETT (CO Bar No. 37050)
Trial Attorney
Federal Programs Branch
U.S. Department of Justice, Civil Division
20 Massachusetts Ave. NW, Room 7310
Washington, DC 20530
Tel.: (202) 305-8902
Fax: (202) 616-8470
Email: michelle.bennett@usdoj.gov
Counsel for Defendants

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

NATURAL RESOURCES DEFENSE)	
COUNCIL, INC.; SIERRA CLUB;)	Case No.: 17-cv-03404-VC
CONSUMER FEDERATION OF AMERICA;)	
and TEXAS RATEPAYERS' ORGANIZATION)	
TO SAVE ENERGY,)	STIPULATION AND [PROPOSED]
)	ORDER CONSOLIDATING CASES
Plaintiffs,)	
)	No hearing requested
v.)	
)	
RICK PERRY, in his official capacity as)	
Secretary of the United States Department of)	
Energy; and the UNITED STATES)	
DEPARTMENT OF ENERGY,)	
)	
Defendants.)	
)	

Pursuant to Federal Rule of Civil Procedure 42(a), plaintiffs and defendants, through their respective counsel, hereby stipulate to consolidation of the above-captioned action and *California v. Perry*, No. 4:17-cv-03406-VC (N.D. Cal.), subject to the Court's approval. As

1 explained in a similar Stipulation and [Proposed] Order Consolidating Cases filed in *California*
2 *v. Perry*, No. 4:17-cv-03406-VC (N.D. Cal.), the plaintiffs in that case also agree to
3 consolidation of the two cases.

4 1. Federal Rule of Civil Procedure 42(a)(2) permits consolidation of actions that
5 “involve a common question of law or fact.” This case and *California v. Perry*, No. 4:17-cv-
6 03406-VC (N.D. Cal.) involve common questions of law or fact. Plaintiffs in both cases raise
7 the same claims against the same defendants. In particular, plaintiffs allege that the U.S.
8 Department of Energy and Secretary of Energy Rick Perry violated the Energy Policy and
9 Conservation Act, the Administrative Procedure Act, and the Federal Register Act by failing to
10 publish final rules setting forth energy-efficiency standards for four categories of consumer
11 products and industrial equipment.

12 2. This Court previously determined that the two cases are related under Civil L.R.
13 3-12, because, *inter alia*, they concern substantially the same parties, property, transaction or
14 event and there would likely be an unduly burdensome duplication of labor and expense if the
15 cases were conducted before different district judges. *See* ECF No. 27; *California*, No. 4:17-cv-
16 03406-VC, ECF No. 48.

17 3. The cases raise identical claims against the federal government, and thus,
18 consolidation will avoid duplicative proceedings and save time and effort for the parties and the
19 Court. Consolidation will allow the parties to benefit from coordinated briefing schedules and
20 proceedings and permit the Court to resolve issues that arise in both cases in a single decision.
21 Moreover, consolidation will not result in any inefficiency, delay, or expense, because the two
22 cases were initiated at almost the same time, defendants have not yet responded to the
23 complaints, and the cases already are assigned to the same district judge. *See, e.g., BizCloud,*
24 *Inc. v. Computer Sciences Corp.*, No. C-13-05999 JCS, 2014 WL 1724762, at *2 (N.D. Cal. Apr.
25 29, 2014) (ordering consolidation under similar circumstances).

26 Accordingly, IT IS HEREBY STIPULATED, by and between plaintiffs and defendants,
27 subject to the Court’s approval, that *Natural Resources Defense Council v. Perry*, No. 3:17-cv-
28

03404-VC (N.D. Cal.) and *California v. Perry*, No. 4:17-cv-03406-VC (N.D. Cal.) shall be consolidated pursuant to Federal Rule of Civil Procedure 42(a)(2). Each set of plaintiffs shall be permitted to file separate motions and briefs, and independently make other litigation decisions. Defendants shall be permitted to file separate motions and briefs in the respective cases, as needed. Because *Natural Resources Defense Council v. Perry*, No. 3:17-cv-03404-VC (N.D. Cal.) was filed first, it shall be the lead case for all future filings.

Dated: August 15, 2017

/s/ Jennifer A. Sorenson

JENNIFER A. SORENSON (SBN 268665)
Natural Resources Defense Council
111 Sutter Street, 21st Floor
San Francisco, CA 94104
Telephone: (415) 875-6164
Fax: (415) 795-4799
E-mail: jsorenson@nrdc.org

AARON COLANGELO, *pro hac vice*
Natural Resources Defense Council
1152 15th Street, NW, Suite 300
Washington, DC 20005
Telephone: (202) 289-2376
Fax: (415) 795-4799
E-mail: acolangelo@nrdc.org

*Counsel for Plaintiff Natural Resources
Defense Council*

/s/ Timothy D. Ballo

TIMOTHY D. BALLO, *pro hac vice*
Earthjustice
1625 Massachusetts Avenue, NW
Suite 702
Washington, DC 20036
Telephone: (202) 745-5209
Fax: (202) 667-2356
E-mail: tballo@earthjustice.org

1 GREGORY C. LOARIE (SBN 215859)
2 Earthjustice
3 50 California Street, Suite 500
4 San Francisco, CA 94111
5 Telephone: (415) 217-2000
6 Fax: (415) 217-2040
7 E-mail: gloarie@earthjustice.org

8 *Counsel for Plaintiffs Sierra Club,*
9 *Consumer Federation of America, and*
10 *Texas Ratepayers' Organization to Save Energy*

11 Dated: August 15, 2017

12 CHAD A. READLER
13 Acting Assistant Attorney General

14 BRIAN STRETCH
15 United States Attorney

16 ERIC R. WOMACK
17 Assistant Branch Director

18 /s/ Michelle R. Bennett
19 MICHELLE R. BENNETT (CO Bar No. 37050)
20 Trial Attorney
21 United States Department of Justice
22 Civil Division, Federal Programs Branch
23 20 Massachusetts Ave. NW, Room 7310
24 Washington, DC 20530
25 Tel: (202) 305-8902
26 Fax: (202) 616-8470
27 Email: michelle.bennett@usdoj.gov

28 *Counsel for Defendants*

* * * *

PURSUANT TO STIPULATION, IT IS HEREBY ORDERED that *Natural Resources Defense Council v. Perry*, No. 3:17-cv-03404-VC (N.D. Cal.) and *California v. Perry*, No. 4:17-cv-03406-VC (N.D. Cal.) are consolidated under Federal Rule of Civil Procedure 42(a)(2). Each set of plaintiffs shall be permitted to file separate motions and briefs, and independently make other litigation decisions. Defendants shall be permitted to file separate motions and briefs in the respective cases, as needed. *Natural Resources Defense Council v. Perry*, No. 3:17-cv-03404-VC (N.D. Cal.) shall be the lead case for all future filings.

Dated: _____

HON. VINCE CHHABRIA
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2017, I electronically filed the foregoing document with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system.

I also certify that I sent the foregoing document, via email, to all counsel of record who are registered on the CM/ECF system in *California v. Perry*, No. 4:17-cv-03406-VC (N.D. Cal.).

/s/ Michelle R. Bennett
MICHELLE R. BENNETT (CO Bar No. 37050)